



House of Representatives

General Assembly

File No. 5

January Session, 2005

House Resolution No. 7

House of Representatives, February 25, 2005

The House Committee on Public Health reported through REP. SAYERS of the 60th Dist., Chairperson of the Committee on the part of the House, that the resolution ought to be adopted.

**RESOLUTION APPROVING THE SETTLEMENT AGREEMENT IN
ASSOCIATION FOR RETARDED CITIZENS - CONNECTICUT V.
PETER O'MEARA AND PATRICIA WILSON-COKER.**

Resolved by this House:

- 1 That the provisions of the settlement agreement in the action
- 2 Association for Retarded Citizens - Connecticut v. Peter O'Meara and
- 3 Patricia Wilson-Coker, United States District Court, District of
- 4 Connecticut, Civil Action No. 3:01CV1871 (JBA), requiring expenditure
- 5 from the General Fund budget in excess of two million five hundred
- 6 thousand dollars and submitted by the Attorney General to this
- 7 Assembly for approval in accordance with section 3-125a of the general
- 8 statutes, are approved.

PH *House Favorable*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Wait List Settlement Agreement - 5 yr (\$ in millions)					
	FY 05	FY 06	FY 07	FY 08	FY 09
Litigation & Consultant Costs	.64	.1	.1	.1	.1
Wait List Costs [1]	0	8.2	8.2	8.2	8.2
Total New Costs Each Year	.64	8.3	8.3	8.3	8.3
Total Cumulative Cost	.64	8.94	17.24	25.54	33.84
Total New Revenue Each Year	0	4.1	4.1	4.1	4.1
Total Cumulative Revenue	0	4.1	8.2	12.3	16.4
Net Budgetary Impact Each Year	.64	4.2	4.2	4.2	4.2
Net Cumulative Budget Impact	.64	4.84	9.04	13.24	17.44

[1] FY 05 Budget included \$4.4 million for wait list waiver eligible services and therefore not reflected in the table. The governor recommended FY 06 - FY 07 budget contains the \$8.2 million each year as referenced above.

The settlement agreement is anticipated to result in additional costs of \$8.3 million and revenue of \$4.1 million each year starting in FY 06. The total five-year cumulative impact of the settlement agreement, excluding those resources already in the FY 05 Budget, is \$33.8 million in costs alone with a gain of \$16.4 million in federal revenue, amounting to a net budgetary impact of \$17.4 million. As referenced above the only anticipated cost in FY 05 is for the required litigation and expert consultant expenses. The FY 05 Midterm Budget Adjustments (PA 04-216) included wait list resources in the Department of Mental Retardation (DMR) that is consistent with the settlement requirements. The governor's recommended FY 06 - FY 07 biennial budget includes wait list funding in DMR for FY 06 and FY 07. The governor's recommended funding for wait list resources (new services and annualized) is consistent with the settlement agreement requirements.

Summary: The Settlement Agreement (ARC/Connecticut, Et. Al.

vs. Peter H. O' Meara, Et. Al.) addresses actions involving the administration of the Department of Mental Retardation's (DMR) "waiting list" and the level of resources to be provided for residential support and other services under the Medicaid Home and Community Based Services (HCBS) waiver. The following areas are addressed in the settlement agreement: 1) resources needed to reduce the waiting list; 2) the creation of an independent expert consultant to monitor progress; 3) the one-time payment of legal fees for the plaintiffs; 4) requirements on DMR to provide clients with information identified in the settlement agreement; 5) case manager training; and 6) the development of new home and community based waivers under the state's Medicaid program.

Wait List Resource Requirements: For the five-year period of FY 05 - FY 09, the settlement agreement establishes a requirement that each client receive an average of \$50,000 per year to address the residential needs of 150 individuals on the waiting list who are categorized as Emergency or Priority 1. It also states that not less than an average of \$5,000 per person per year be provided for an additional 100 individuals on the department planning list to receive enhanced family supports. This would result in 750 individuals on the wait list being served (and removed from the wait list) over the five-year period and an additional 500 individuals receiving enhanced family supports over the same time period.

The governor's recommended FY 06 - FY 07 biennial budget includes wait list funding in FY 06 of \$8.2 million (plus rent subsidy of \$200,000 - a nonwaiver service and not required under the settlement agreement). The two year total of \$16.5 million is recommended by the governor for wait list resources (plus a 2-year total of \$350,000 of rent subsidies). The governor's recommended funding for wait list resources (new and annualized) is consistent with the settlement requirements.

The state received federal reimbursement under Medicaid's HCBS waiver at 50% for waiver eligible costs (revenue is deposited into the

General Fund and is not retained by the agency).

The initial implementation of the DMR Wait List Initiative, as provided in the PA 04-216 (FY 05 Budget), included partial year funding and a phased-in implementation to start the wait list initiative. Each subsequent year would include the same schedule of new costs (\$4.4 million) for the new clients to be served and the annualization (\$3.8 million) of the prior year costs (needed to fully fund services for the year). This reflects annual new dollars of \$8.2 million. This does not include the rent subsidy funding, which although it is part of the FY 05 budget and governor's recommended FY 06 - FY 07 budget for wait list individuals, it is specifically excluded from resource commitments required in the settlement (as it is considered room & board costs and not reimbursed under Medicaid).

The FY 05 Budget (as does the governor's recommended FY 06 - FY 07) included funding for age-outs and high school graduates separate from wait list funding. The settlement agreement specifically excludes the graduates and age-outs from wait list resource allocation requirements, although it does make reference to the preservation of department funding specifically dedicated to age-outs and grads.

Litigation and Expert Consultation Costs: The settlement agreement requires the state to make a one-time payment of \$535,000 for the plaintiffs' attorney fees and court costs to date. Also required in the agreement is the retention of an expert consultant to be reimbursed for costs incurred up to \$100,000 a year for the five-year period. The independent consultant will be responsible for reviewing progress and reporting to the parties concerning implementation of the agreement. While \$535,000 will be incurred in FY 05, it is unclear if the full \$100,000 for the expert consultant will be incurred prior to June 30, 2005, therefore FY 05 costs may range from \$535,000 to \$635,000. These costs are anticipated to be paid from the state's Adjudicated Claims account, a non-appropriated General Fund account. Payments from this account would reduce a surplus or increase a deficit in the General Fund. For each year the additional cost for the expert consultant is

anticipated to be \$100,000 (five-year total of \$500,000).

Waiver Requirements: Currently, the state has a Medicaid Home and Community Based Services (HCBS) Waiver which covers comprehensive services. The current HCBS waiver will expire in October 2005. The settlement requires that the state apply for a replacement waiver for comprehensive services. The settlement also requires that the state apply for an Individual and Family Support (IFS) waiver during FY 05. In July 2004 the Appropriations and Human Services Committee approved the second Home and Community Based Waiver (referred to as the Individual and Family Support Waiver). The waiver was submitted by the Departments of Social Services (as the Medicaid agency) and Mental Retardation (as the service agency) and was federally approved in January 2005. This new waiver will increase the service options and increase the ability of the department to allow for self-direction of supports by individuals living with their families or on their own. As with the HCBS comprehensive waiver, the new waiver will result in the state receiving federal reimbursement for costs incurred from waiver covered services. PA 04-216 (the FY 05 Budget) included the anticipated revenue from both the HCBS waiver and the new IFS Waiver as mentioned above.

Additional settlement requirements of developing and implementing various initiatives designed to inform and guide class members and their family on waiver and service related issues and providing case manager training is not anticipated to result in additional cost as these have been ongoing department initiatives and are being handled within existing resources.

Spending Cap Issue: Expenditures for implementation of federal mandates or court orders are not to be considered general budget expenditures for the fiscal year in which such expenditures are authorized, but shall be considered as expenditures in the ensuing fiscal years. Therefore, new dollars appropriated each year (for that year only) as required in the settlement agreement shall be exempt

under the spending cap.

Background Information on DMR's Wait List Initiative: The department's wait list initiative (as implemented in the FY 05 budget) included \$4.4 million in residential services (not including rent subsidies) and other waiver eligible supports for 150 individuals on the wait list (Emergency and Priority 1) with an average cost of \$50,000. Also included in the budget was family supports for 100 individuals on the planning list (categorized as Priority 2 or 3) with an average cost of \$6,000. The initiative was based on, approximately 1,086 individuals on the waiting list (64 categorized as Emergency and 1,022 categorized as Priority 1). In addition, the planning list reflected 1,468 individuals categorized as either Priority 2 or 3.

The department's wait list initiative reflected that each subsequent year would include the same schedule of new costs for the new clients to be served and the annualization of the prior year costs (needed to fully fund services for the year). The total of which would result in approximately \$8.2 million in new funding each year. Services and supports would be phased-in during the first year of funding, however, by the fiscal year-end the services and supports for each of the individuals receiving new supports will have been implemented. This mirrors the resource requirements presented in the settlement agreement and is reflected in the governor's recommended FY 06 - FY 07 budget.

The department's initiative (and the FY 05 Budget) also included HCBS waiver revenue enhancements. Included in the FY 05 General Fund Revenue schedule as part of Medicaid's HCBS waiver reimbursement was \$7.9 million (\$9.9 million annualized in FY 06) from DMR's waiver revenue enhancements. By enrolling individuals on the HCBS waiver who were eligible but not yet enrolled, the state is able to claim reimbursement on existing costs that were previously not claimed. Most of these individuals have been receiving day services and were not on the waiting list for residential services. This amount was part of the overall FY 05 anticipated HCBS waiver revenue of \$206

million.

OLR Bill Analysis

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SUMMARY:

The Office of Legislative Research does not analyze Resolutions.

COMMITTEE ACTION

Public Health Committee

House Favorable

Yea 19 Nay 0

Judiciary Committee

Change of Reference Public Health Committee